

**MEMORANDUM**

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Bill 10-13, Taxation – Excise Tax – Disposable Carryout Bags - Scope

Bill 10-13, Taxation – Excise Tax – Disposable Carryout Bags - Scope, sponsored by Councilmembers Berliner, Floreen, and Rice, was introduced on April 23, 2013. A Transportation, Infrastructure, Energy and Environment Committee worksession is tentatively scheduled for July 8 at 9:30 a.m.

Bill 10-13 would limit the excise tax on carryout bags, enacted in Bill 8-11, to those used at food stores. A food store is defined as any retail store where food consists of more than 2% of gross sales by dollar value. The tax would continue to cover bags used at food stores for non-food items. Bill 10-13 would also repeal the tax on plastic food take-out bags.

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Bill No. 10-13  
Concerning: Taxation – Excise Tax –  
Disposable Carryout Bags - Scope  
Revised: 4-16-13 Draft No. 3  
Introduced: April 23, 2013  
Expires: October 23, 2014  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmembers Berliner, Floreen, and Rice

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**AN ACT** to:

- (1) modify the scope of the excise tax on certain disposable carryout bags; and
- (2) generally amend the law governing the excise tax on certain disposable carryout bags.

By amending

Montgomery County Code  
Chapter 52, Taxation  
Section 52-101

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Section 52-101 is amended as follows:**

**52-101. Definitions.**

In this Article, the following terms have the following meanings:

\* \* \*

*Carryout bag* means a paper or plastic bag provided by a retail food sale establishment to a customer at the point of sale, pickup, or delivery to carry purchased items. Carryout bag does not include:

- (1) a bag provided by a pharmacist that contains a prescription drug;
- (2) any newspaper bag or bag intended for initial use as a dry cleaning, garbage, pet waste, or yard waste bag;
- (3) a bag provided at the point of sale at a seasonal event, such as a farmers market, street fair, or yard sale, or by an occasional retailer;
- (4) a [paper] bag that a restaurant gives a customer to take prepared or leftover food or drink from the restaurant; or
- (5) a bag used to package a bulk item or to contain or wrap a perishable item.

\* \* \*

*Retail establishment* means any person engaged in the retail sale of [goods] food, alone or in combination with other items. Retail establishment includes any supermarket, convenience store, shop, service station, or restaurant, and any other sales outlet where a customer can buy [goods] food. *Retail establishment does not include any place where the sale of food does not exceed 2% of the gross sales, by dollar value, of all items sold.*

*Approved:*

Nancy Navarro, President, County Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 10-13

*Taxation – Excise Tax – Disposable Carryout Bags - Scope*

<b>DESCRIPTION:</b>	Limits the excise tax on carryout bags to those used at food stores. Food store is defined as any retail store where food consists of more than 2% of gross sales by dollar value. The tax would continue to cover bags used at food stores for non-food items. Also repeals the tax on plastic food take-out bags.
<b>PROBLEM:</b>	Consumers find it inconvenient to carry reusable bags to non-food stores, such as department stores. Non-food bags make up small amounts of bag litter.
<b>GOALS AND OBJECTIVES:</b>	To focus the tax on disposable bags on those which create most of the litter problem.
<b>COORDINATION:</b>	Department of Environmental Protection, Department of Finance
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Michael Faden, Senior Legislative Attorney, 240-777-7905
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	Class A for failure to remit tax by retailer.

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ROCKVILLE, MARYLAND

MEMORANDUM

May 14, 2013

TO: Nancy Navarro, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Joseph F. Beach, Director, Department of Finance

SUBJECT: Council Bill 10-13, Taxation - Excise Tax - Disposable Carryout Bags - Scope

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:a2a

c: Kathleen Boucher, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Joseph F. Beach, Director, Department of Finance  
Michael Coveyou, Department of Finance  
David Platt, Department of Finance  
Robert Hagedoorn, Department of Finance  
Robert G. Hoyt, Director, Department of Environmental Protection  
Gladys Balderrama, Department of Environmental Protection  
Alex Espinosa, Office of Management and Budget  
Matt Schaeffer, Office of Management and Budget  
Ayo Apollon, Office of Management and Budget

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**Fiscal Impact Statement**  
**Bill 10-13 Taxation - Excise Tax - Disposable Carryout Bags - Scope**

**1. Legislative Summary.**

Bill 10-13 amends Bill 8-11 which established an excise tax on certain disposable carryout bags. Under the proposed legislation, retail establishments that sell goods or any retail establishment where the sale of food does not exceed 2 percent of the gross sales of all items sold would no longer be required to collect the 5 cent tax and remit it to the County, less 1 cent per bag that the retailer may retain to offset the administrative cost of collecting the tax.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

Based on data from the Department of Finance, approximately 38 percent of the total carryout bags subject to the 5-cent tax under current Bill 8-11 would no longer be subject to the tax under Bill 10-13. The FY14 recommended operating budget for the Watershed Management Program includes \$1,832,000 in Bag Tax revenue. If Bill 10-13 takes effect on July 1, 2013, the 38 percent reduction in carryout bags would result in a revenue reduction of \$696,160 (38 percent) in FY14. If implementation of Bill 10-13 were to take effect November 1, 2013, the revenue reduction would be \$464,110 in FY14 due to the four additional months of revenue (see attached chart below).

<b>Bag Tax Revenue</b>		
	<b>FY14</b>	<b>6 Year Total (est.)</b>
Current Bag Tax Revenue	\$1,832,000	\$6,758,760
<b>Revenue under Bill 10-13</b>		
Projected % Loss of Revenue	38%	38%
<i>Effective July 1</i>		
Projected Revenue Loss	(\$696,160)	(\$2,568,330)
Total Revenue	\$1,135,840	\$4,190,430
<i>Effective November 1*</i>		
Projected Revenue Loss	(\$464,110)	(\$2,336,280)
Total Revenue	\$1,367,890	\$4,422,480
*Revenue Estimates have been adjusted to note the 4 months of additional revenue as a result of the later effective date in the first year.		

The FY14 recommended operating budget assumes a level of Bag Tax revenue needed for the Water Quality Protection Fund (WQPF) to administer the County's stormwater management program and comply with the County's MS4 permit. As shown above, Bill 10-13 reduces the projected Bag Tax revenue.

Due to the fact that the Water Quality Protection Charge (WQPC) is set at \$88.40 for FY14, a reduction in Bag Tax revenue under Bill 10-13 may result in a reduction in total revenues needed to support programmed expenditures. This may require a reduction or

delaying programmed expenditures in order to maintain established debt service coverage ratio requirements.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

Bill 10-13 would create a permanent revenue decrease. The estimated lost revenue over the six-year period varies depending on when the new law takes effect. Beyond FY14, the revenue lost as a result of Bill 10-13, will need to be offset by an increase in the WQPC to support programmed expenditures required by the County's MS4 permit.

**4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

**5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Not applicable.

**6. An estimate of the staff time needed to implement the bill.**

No change in staff time is expected (currently, 1 FTE is budgeted to administer the program). However, the Department of Environmental Protection (DEP) expects inquiries regarding whether particular entities are covered by the bag tax law to increase. DEP also expects enforcement cases to increase as some covered entities may mistakenly believe they are now not subject to the bag tax law.

**7. An explanation of how the addition of new staff responsibilities would affect other duties.**

Not applicable.

**8. An estimate of costs when an additional appropriation is needed.**

Not applicable.

**9. A description of any variable that could affect revenue and cost estimates.**

A variable that could affect the revenue impact is the criteria used in the identification of qualifying an entity under the bag tax law. Some retailers sell food along with other merchandise and any adjustment to the definition of a qualifying entity would affect revenues and future implementation costs.

**10. Ranges of revenue or expenditures that are uncertain or difficult to project.**

Not applicable.

**11. If a bill is likely to have no fiscal impact, why that is the case.**

Not applicable.

**12. Other fiscal impacts or comments.**

Not applicable.

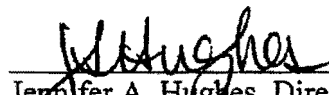
**13. The following contributed to and concurred with this analysis:**

Gladys Balderrama, Department of Environmental Protection

Matt Schaeffer, Office of Management and Budget

Robert Hagedoorn, Department of Finance

David Platt, Department of Finance

  
\_\_\_\_\_  
Jennifer A. Hughes, Director  
Office of Management and Budget

5/15/13  
Date



**Economic Impact Statement**  
**Bill 10-13, Taxation – Excise Tax – Disposable Carryout Bags - Scope**

**Background:**

This legislation would limit the excise tax on carryout bags, enacted in Bill 8-11, to those used at food stores. A food store is defined as any retail store where the food consists of more than 2 percent of gross sales by dollar value. The tax would continue to cover bags used at food stores for non-food items. This legislation would repeal the tax on plastic food take-out bags.

**1. The sources of information, assumptions, and methodologies used.**

The source of information and data is from the Department of Finance, Treasury Division. The latest data cover actual collections through March 2013 which is used as a basis for these estimates:

- Of the estimated total 1,100 retailers that pay the bag tax, approximately 120 retailers or 11 percent of all retailers are food stores.
- The food stores represent an estimated 62 percent of all collections from the bag tax.
- Among the food stores:
  - 72 percent of all bags are provided by the top five food stores
  - 82 percent of all bags are provided by the top ten food stores
  - The remaining estimated 110 food stores provide less than 18 percent of all bags issued by food stores.
- Under Bill 10-13, therefore, only 11 percent of the retail establishments would be required to collect the bag tax and 89 percent of the retail establishments would be excluded from collecting the tax.

**2. A description of any variable that could affect the economic impact estimates.**

The variable that could affect the economic impact is the identification of food establishments. Large grocery outlets are easily identified under the criterion of gross sales by dollar value, however, some retail establishments such as Wal-Mart Stores, Inc. (Walmart) have sales other than food items, and total food sales may comprise less than 2 percent of gross sales by dollar value. Therefore the economic impact will depend on the number of retail establishments in the County that are defined as food stores. The estimate of the economic impact is based on data collected by the Department of Finance that clearly identify food stores under the criterion of gross sales by dollar value.

**3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.**

There is a modest positive economic impact from Bill 10-13 on Montgomery County due to increased disposable income resulting from reduced expenses for retail

**Economic Impact Statement**  
**Bill 10-13, Taxation – Excise Tax – Disposable Carryout Bags - Scope**

shoppers (i.e., 5 cents per bag). However, while shoppers benefit from the reduced taxation which limits the bag tax to retailers that sell primarily food items, there is a partially offsetting cost for retailers who no longer receive a reimbursement of 1 cent per bag even though it is assumed that they will continue to provide bags to customers at no cost.


The CE Recommended Budget assumed a 20 percent reduction in the number of bags provided county-wide between fiscal years 2013 (FY13) and 2014 (FY14) reducing the estimated net bag tax revenues from \$2,290,000 in FY13 to \$1,832,000 in FY14. The economic impact from Bill 10-13 consistent with the CE Recommended Budget estimated assumption for FY14 would be \$696,000 which represents a positive impact for retail shoppers of \$870,000 but a partially offsetting increase in cost for non-food retailers of \$174,000 assuming Bill 10-13 is effective July 1, 2013.

Although the long-term estimate for the bag tax program is a gradual reduction in the number of bags provided, if there is no near-term reduction, the number of bags provided in FY14 may be similar to FY13. Under that scenario, the economic impact for FY14 would be \$870,000 which represents a positive impact for retail shoppers of \$1,088,000 but a partially offsetting increase in cost for non-food retailers of \$218,000 assuming Bill 10-13 is effective July 1, 2013.

**4. If a Bill is likely to have no economic impact, why is that the case?**

N/A. The legislation will have an economic impact as noted in item #3.

**5. The following contributed to and concurred with this analysis: Rob Hagedoorn, David Platt and Mike Coveyou, Finance.**

  
\_\_\_\_\_  
Joseph F. Beach, Director  
Department of Finance

5/15/13  
Date